IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL FIRST APPEAL NO.552/2004
Jahoor Mohd. Vs. Addl. Distt. Judge & Ors.

Against judgment and decree dated 29.07.2004 passed by Addl. District Judge (Fast Track), Parbatsar in Civil Original Suit No. 139/2004 (17/1998) – Jahoor Mohd. Vs. State & Ors.

DATE OF JUDGMENT :: 22nd March, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Mahipal Rajpurohit for appellants.
Mr. A.K. Acharya for respondents.

BY THE COURT:

At the joint request, the matter has been heard at the admission stage finally as the record of the case has been received.

In this first appeal, filed under Sec. 96 CPC, the Judgment & decree dated 29.07.2004 passed by Addl. District Judge (Fast Track), Parbatsar in Civil Original Suit No. 139/2004

(17/1998) (Jahoor Mohd. Vs. State & Ors.) is under challenge whereby the civil suit filed by the appellant-plaintiff for declaration of rights and permanent injunction has been dismissed with costs.

The contention of the learned counsel for the appellants is that the learned trial Court has not property considered the matter and in the absence of the written statement the suit was liable to be decreed. The learned counsel further submits that the appellant are entitled to use the quarry which was allotted earlier to their uncle. According to the learned counsel, the trial Court infact has failed to consider that the appellants or their father were in possession of the disputed quarry. In the last, it has been submitted that in case the appeal is dismissed then observation may be made to the effect that if the appellants move an application for allotment/transfer of the quarry in their names before the concerned respondent then in that event the application may be considered by the competent authority sympathetically.

On the other hand, it has been submitted by the learned counsel for respondents that no licence was ever granted to the appellants or their father Jahoor Mohd but infact the quarry in question was given to Fateh Mohd. long back, who has already expired no rights whatsoever accrue to the appellants or their father. It has also been submitted that in the year 1992 in respect of the quarry in question licence was cancelled on account of illegal mining, therefore, there is nothing in this case and the appeal requires to be dismissed.

I have considered the submissions made before me.

The trial Court has categorically discussed the matter and found that under law the appellants' father had no entitlement of whatsoever nature in the quarry in question and therefore dismissed the suit filed for declaration of rights and permanent injunction with costs. It appears that there was some

agreement between the two brothers, i.e. Jahoor Mohd and Fateh Mohd., and the appellants' father Jahoor Mohd. tried to take advantage thereof by claiming his possession over the quarry. Be as it may, in view of the fact that there exist no right of the appellants or their father in relation to a quarry which was allotted to the uncle of the appellants', I find no illegality or infirmity in the order passed by the learned trial Court. The contentions raised by the learned counsel for the appellants have no merit and the appeal being devoid of any substance is liable to be dismissed. However, it will be open for the appellants to make an application before the concerned authorities for transfer/allotment of the quarry in question and the authorities on filing such an application consider the same sympathetically in accordance with law.

No orders as to costs.

(SATYA PRAKASH PATHAK)J.

/jpa